



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 4, 2017

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Kendrick Smith *[Signature]*
Audit Manager

By: Rosa Crussiah *[Signature]*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Kind for Congress
Committee (KFCC) (A15-02)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendation below and discusses the finding in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendation.

Untimely Deposit of Receipts

The Audit staff determined that KFCC failed to deposit, within 10 days of receipt, contributions totaling \$581,719 during the 2014 election cycle. In response to the Interim Audit Report recommendation, KFCC acknowledged the issue and stated that it has proactively taken a number of steps to fix this situation in the future. KFCC reiterated its corrective measures in its response to the DFAR.

The Audit staff recommends that the Commission find that KFCC untimely deposited contributions totaling \$581,719.

KFCC did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Rosa Crussiah or Kendrick Smith at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Kind for Congress Committee

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Kind for Congress Committee

(January 1, 2013 - December 31, 2014)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to the matter discussed in this report.

About the Campaign (p. 2)

Kind for Congress Committee is the principal campaign committee for Ronald Kind, Democratic candidate for the United States House of Representatives from the state of Wisconsin, 3rd Congressional District, and is headquartered in La Crosse, Wisconsin. For more information, see the Campaign Organization chart, p.2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 602,932
○ Contributions from Political Committees	1,564,507
○ Offsets to Operating Expenditures	5,001
○ Other Receipts	1,316
Total Receipts	\$ 2,173,756
• Disbursements	
○ Operating Expenditures	\$ 1,180,511
Total Disbursements	\$ 1,180,511

Finding and Recommendation (p. 3)

- Untimely Deposit of Receipts

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on Kind for Congress Committee

(January 1, 2013 - December 31, 2014)

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Part I Background

Authority for Audit

This report is based on an audit of Kind for Congress Committee (KFCC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act, 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	January 30, 1996
• Audit Coverage	January 1, 2013 - December 31, 2014
Headquarters	La Crosse, WI
Bank Information	
• Bank Depositories	Seven
• Bank Accounts	One checking, Six savings
Treasurer	
• Treasurer When Audit Was Conducted	Brent Smith (February 10, 2016 - present) Charles Marx (January 30, 2009 - February 9, 2016)
• Treasurer During Period Covered by Audit	Charles Marx
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2013	\$ 458,874
Receipts	
○ Contributions from Individuals	602,932
○ Contributions from Political Committees	1,564,507
○ Offsets to Operating Expenditures	5,001
○ Other Receipts	1,316
Total Receipts	\$ 2,173,756
Disbursements	
○ Operating Expenditures	1,180,511
Total Disbursements	\$ 1,180,511
Cash-on-hand @ December 31, 2014	\$ 1,452,119

Part III Summary

Finding and Recommendation

Untimely Deposit of Receipts

During audit fieldwork, a review of contributions from political committees determined that KFCC failed to deposit, within 10 days of receipt, contributions totaling \$581,719 received during the 2014 election cycle. In response to the Interim Audit Report recommendation, KFCC acknowledged the finding and stated that it has taken several measures to ensure future compliance with regard to timely deposit of its receipts. (For more detail, see p. 4.)

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Part IV

Finding and Recommendation

Untimely Deposit of Receipts

Summary

During audit fieldwork, a review of contributions from political committees determined that KFCC failed to deposit, within 10 days of receipt, contributions totaling \$581,719 received during the 2014 election cycle. In response to the Interim Audit Report recommendation, KFCC acknowledged the finding and stated that it has taken several measures to ensure future compliance with regard to timely deposit of its receipts.

Legal Standard

- A. Timing of Deposits.** A treasurer of a political committee is responsible for making deposits of contributions. These deposits must be made within 10 days of the receipt of the contribution. 11 CFR §103.3(a).
- B. Receipt of Contributions.** Every person who receives a contribution in excess of \$50 for a political committee which is an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the committee: The contribution, the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution. 52 U.S.C. §30102(b)(1) and 11 CFR §102.8(a).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and focused reviews to identify the untimely deposit of contributions received from political committees. The sample testing and focused reviews identified untimely deposit errors totaling \$581,719.² This amount represents approximately 37% of all contributions from political committees. On average, the time between receipt and deposit of these contributions was 26 days, ranging from 14 to 100 days.

During this review, the Audit staff asked KFCC officials which date they used on the FEC disclosure reports. A KFCC representative responsible for the daily input of contributions informed the Audit staff, on more than one occasion, that the receipt date

² The sample error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the result of a focused review of contributions not included in the sample population. The sample estimate could be as low as \$492,045 and as high as \$625,394.

reported in its FEC disclosure filings was the date the contribution was received by KFCC. Based on this affirmation, the Audit staff used the date of receipt provided in KFCC's receipts database (which agreed with the date of receipt reported on the disclosure reports) to determine the number of days it took KFCC to deposit its contributions.

However, because KFCC representatives later expressed some uncertainty about the validity of the actual dates of receipt (see discussion below), the Audit staff revised its calculation and used the date of the contributor check (plus three days for mailing) as the date of receipt in determining the number of days from receipt of the contributor check to its deposit.³

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with KFCC representatives during the exit conference at the conclusion of audit fieldwork, and provided them with work papers detailing the untimely deposited contributions. The representatives stated that the contributions from political committees were received by a representative in Washington, D.C. and mailed to their Wisconsin office for deposit.⁴ According to the representatives, the mail delivery from Washington, D.C. to its office in La Crosse, Wisconsin sometimes took up to 10 days. As a result, KFCC was not able to timely deposit these contributions. Furthermore, the representatives stated that they were uncertain of the actual date of receipt of these contributions and they questioned whether it should be the date the contributions were received in Washington, D.C. or La Crosse, Wisconsin. They added that, in the future, they would look at various ways to ensure contributions were timely deposited. The Audit staff suggested that the representative in Washington, D.C. make the deposits locally since KFCC utilized a national bank with many locations within the city. Then, the representative could email a list of the contributions to KFCC for reporting purposes, etc. The Audit staff also suggested the use of express shipping to reduce the mail delivery time to Wisconsin. The representatives said they would consider these options. No additional information was provided in KFCC's response to the exit conference.

In accordance with 11 CFR §102.8(a), the date of receipt is the day the KFCC representative in Washington, D.C. obtains possession of the contribution.⁵ The representative in Washington, D.C. was an authorized agent of the treasurer who was allowed to accept contributions on behalf of KFCC. Therefore, KFCC must ensure that deposits are made within 10 days of its Washington, D.C. representative's receipt to comply with the requirements of 11 CFR §103.3(a).

³ This method of determining a receipt date is utilized by the Audit staff when the actual receipt date is unknown. There was a minor decrease in the error total using this method.

⁴ Contributions from individuals were usually mailed directly to the KFCC office in La Crosse, WI.

⁵ The Act and Commission regulations contemplate that the treasurer will have authorized agents to receive contributions and make expenditures for the committee. 11 CFR §102.9. The receipt of a contribution by an authorized agent is the equivalent of the treasurer's receipt and triggers the 10-day deposit period at 11 CFR §103.3(a). Advisory Opinion 1992-29 (Holtzman).

The Interim Audit Report recommended that KFCC provide evidence demonstrating that the contributions in question were deposited timely or submit any additional comments relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, KFCC acknowledged the issue and stated that it has proactively taken a number of steps to fix this situation in the future. To ensure that all contributions are deposited in a timely manner, KFCC stated that it had made the following changes:

- It has engaged a professional compliance firm to further ensure compliance with all applicable rules.
- Wisconsin staff now makes deposits of contributions on a weekly basis to ensure timely deposit of all contributions received in Washington, D.C.
- It has a new campaign treasurer, and campaign staff has received additional training regarding compliance rules.
- When donations are received by campaign staff in Washington, D.C., the contributions are now deposited directly into a D.C. branch of their financial institution.
- Keeping all additional records relevant to when contributions are received, including envelopes and additional paperwork.

KFCC stated "that the statute and FEC rules are unclear with respect to the timeliness of deposits – they could easily be read to allow 20 days..." KFCC also reiterated that mail delivery to rural areas, such as La Crosse, Wisconsin, can take weeks and that "the FEC's one-size-fits-all policy on timeliness of deposits does not take into account that mail delivery in rural areas is generally much slower than in big cities or on the coasts."

The Audit staff acknowledges the procedural changes that KFCC has made to comply with the requirements of 11 CFR §103.3(a). While there are mail delivery challenges that some committees in rural areas may face, the Commission has addressed this matter by establishing deposit guidance after receipt of the contribution. It is not until after the contribution is received by the treasurer or the treasurer's authorized agent that it must be deposited within 10 days. The Commission established this guidance to promote the timely deposit of contributor checks.

The provisions at issue in the KFCC response are 11 CFR §103.3(a), which requires that all receipts by a political committee be deposited within 10 days of the treasurer's receipt, and 11 CFR §102.8(a), which requires every person who receives a contribution for an authorized political committee to forward the contribution to the treasurer no later than 10 days after receipt.

The Act and Commission regulations are clear regarding the time frame for depositing contributions regardless of whether those contributions are received directly by the treasurer or by an individual acting on behalf of the committee. Contributions must be deposited within 10 days of receipt. 11 CFR §103.3. The Commission has stated that when a committee representative or agent receives a contribution, the receipt of that

contribution is imputed to the committee's treasurer and thus must be deposited within 10 days of the treasurer's or agent's receipt.⁶

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⁶ Advisory Opinion 1992-29 (Holtzman) – see also footnote 5.